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Pocatello, ID

Counsel for Deere & Company

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In the Matter of:)	
)	CASE NO.03-41318
LYNN KETTERLING,)	
JEANNE KETTERLING,)	OBJECTION TO
)	CONFIRMATION OF CHAPTER
Debtors.)	12 PLAN
_____)	

COMES NOW Deere & Company, by and through its attorneys of record (hereinafter "Deere"), and pursuant to 11 U.S.C. Section 1225 objects to the confirmation of the Debtors' chapter 12 plan dated September 30, 2003.

In support of its objection, Deere represents the following:

1. Deere has not accepted the Debtors' plan. It is the holder of three fully secured claims. Its proofs of claim were filed on July 16, 2003, as Claim Nos. 7, 8, & 9.

A. Claim No. 7, originally for \$36,152.59, is secured by a 1996 John Deere Model 5446 wheel loader, with cab. Debtors' schedules value this equipment at \$58,000.¹

¹The amount due in this claim on the confirmation hearing date of November 18, 2003 is \$37,578.20 plus attorney fees.

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- B. Claim No. 8, originally for \$1,599.11, is secured by a 1999 John Deere 4 x 2 Gator. Debtors' schedules value this equipment at \$2,000.²
- C. Claim No. 9, originally for \$5,409.53, is secured by a 1999 John Deere Model 8875 Skid Steer Loader with 2 buckets and pallet forks. Debtors' schedules value this equipment at \$16,000.³

2. Debtors' plan proposes to sell Deere's collateral over a period of 6 to 12 months, while they will be able to continue to use the collateral without making any payment to Deere, and further provides that Deere's allowed secured claim will be equal to whatever the Debtor receives as a sales price for the collateral. The Debtors' plan violates 11 U.S.C. Sec. 1225(a)(5)(B)(ii) because there is no meaningful provision in the plan to protect Deere from a sale which is below the collateral's fair market value. For example, Deere is owed \$5,409.53⁴ on a debt secured by a 1999 John Deere Model 8875 Skid Steer Loader with 2 buckets and pallet forks. Debtors' schedules value this equipment at \$16,000. Under the provisions of the Debtors' plan there is no safeguard which would prohibit the Debtors from selling the John Deere Skid Steer Loader for a sales price which is less than what Deere is owed, and for a sales price which is considerably less than the value the Debtors' have ascribed to the loader in their bankruptcy schedules. The plan should allow secured creditors to set a minimum bid, and if the minimum bid is not made, the collateral should be surrendered to the secured creditor or secured creditors should be permitted to make a credit bid at any public auction sale of their collateral.

²The amount due on this claim on the confirmation hearing date of November 18, 2003 is \$1,651.06 plus attorney fees.

³The amount due on this claim on the confirmation hearing date of November 18, 2003 is \$5,556.46 plus attorney fees.

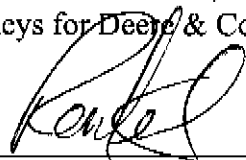
⁴See proof of claim no. 9. The sum of \$5,409.53 is the amount due Deere on the petition date. Pursuant to Section 506 of the Bankruptcy Code, Deere is entitled to post petition accruals of interest and attorney fees.

3. The Debtors' plan violates 11 U.S.C. Sec. 1225(a)(3) because the Debtors' plan is essentially a liquidation plan yet provides no meaningful safeguards or oversight by the Chapter 12 Trustee or secured and unsecured creditors. The Debtors' plan does not establish the role the trustee is to play in any sale, or how the trustee will be compensated for his efforts. Nor does the plan establish a date certain on which any liquidation sale of Deere's collateral would occur (only suggesting that it may take as much as six to twelve months to complete these sales). The Debtors' plan does not clearly identify their intended method of sale, *i.e.*, advertised public auction or a series of private sales with Court approval. The Debtors' plan does not provide a method which would protect Deere from the Debtors' sale of its collateral for less than its fair market value. The plan should allow secured creditors to set a minimum bid, and if the minimum bid is not met, the collateral is surrendered to the secured creditor or secured creditors should be permitted to make a credit bid at any Court hearing regarding the sale of collateral. The Debtors' plan does not identify any "costs" associated with the proposed liquidation sales, or how those costs would be paid by the Debtors. The Debtors' plan does not prohibit the Debtors from continuing to use Deere's collateral until it is sold, thus placing the risk of loss directly on Deere. For example, if the equipment is used and materially damaged or if material repairs are required, the Debtors' plan does not provide any means to repair the damage and restore the collateral to its pre-damage value. Nor do the Debtors propose to provide Deere with adequate protection for their continued use of the collateral until it is sold.

WHEREFORE, having timely objected to the confirmation of the Debtor's chapter 12 plan, Deere requests the Court to deny confirmation of the Debtors' chapter 12 plan dated September 30, 2003.

DATED this 8 day of October, 2003.

COOPER & LARSEN, CHTD.
Attorneys for Deere & Company

By 
Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 8 day of October, 2003, I served a true and correct copy
of the foregoing document as follows:

Forrest Hymas
P.O. Box 89
Jerome, ID 83338

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

U.S. Trustee
304 N. 8th St., Ste. 347
Boise, ID 83702

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By: 
Ron Kerl